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CITIZENS UTILITIES



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TELEPHONE NUMBER
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November 6, 1992

Donna Searcy
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

NOV 09 1992

ORIGINAL
FILE

RE: 90-314, 92-100

Dear Ms. Searcy,

Enclosed is the original plus ten copies of the Comments of Citizens Utilities Company in the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services.

Please return a stamped copy in the enclosed postage paid envelope.

Very truly yours,

Ellen S. Deutsch
Senior Counsel

ESD:dlk

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MAIL ROOM

In the Matter of)	
Amendment of the)	
Commission's)	Gen. Docket No. 90-314
Rules to Establish New Personal)	ET Docket No. 92-100
Communications Services)	
)	

COMMENTS OF CITIZENS UTILITIES COMPANY

Citizens Utilities Company (Citizens) respectfully submits these comments in the Notice of Proposed Rule Making (NPRM) in the above-captioned proceeding. Citizens is a diversified public utility providing telecommunications, gas, electric, water and waste water services to over 830,000 customers in 12 states: Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Louisiana, Ohio, Pennsylvania, Utah and Vermont. Citizens local exchange telephone operations serve approximately 140,000 access lines in California, Arizona and Pennsylvania. Citizens is an investor in a cellular telephone company in Arizona and in a competitive access provider operating in the states of Washington and Oregon. Citizens also holds an experimental license in Sacramento, California to test various personal communications services (PCS) that it wishes to make available to its telephone customers.

Citizens previously filed comments in ET Docket No. 92-9 expressing the multiple and sometimes competing interests of a diversified utility that is both a user of 2 GHz spectrum and is also a potential PCS provider. In Citizens comments in this proceeding, we will focus on the issues of primary importance from the standpoint of our local telephone and cellular operations: licensing eligibility and the licensing process.

I. Local Exchange Carriers Must Not Be Precluded From Obtaining PCS Licenses.

As the Commission recognizes in the NPRM, PCS has the potential to be both complementary to and competitive with basic local exchange carrier (LEC) services. The Commission also recognizes that PCS are essentially an array of services. Although there have been a myriad of studies done on the market for PCS, no one can predict with absolute accuracy which PCS applications will ultimately be successful.

The one thing that is certain, however, is that if the Commission precludes LECs from obtaining PCS licenses, the development of PCS will be drastically curtailed and customers, particularly those in suburban and rural areas, would be unlikely to have access to these services at any time soon.

Any attempt to prohibit LECs from obtaining PCS licenses would be equivalent to limiting the LEC's choice of technology in providing future services to its customers. The use of wireless technology to provide basic services should be just one of the options available to LECs as are other technologies such as fiber optics. Whether or not LECs use wireless technology as a local loop replacement technology will depend on a number of factors including cost, terrain and other considerations that are currently part of any analysis to use wireless technology to provide Basic Exchange Telecommunications Radio Service (BETRS) in rural areas. Citizens has proven the advantages of radio in the local loop in several BETRS applications in Arizona and California. The potential for lower cost, quick installation, provisioning for temporary and emergency services and redundant capabilities have already been proven in these applications. There is absolutely no basis to prohibit the expanded use of radio by LECs to provide vital services. Precluding LECs from access to PCS spectrum would needlessly limit the choice of technology available to provide these beneficial services.

In addition to the use of PCS spectrum for wireless local loop applications, LECS will also provide the broad array of PCS contemplated in the Commission's definition of PCS. Some of these

applications include wireless PBX and Centrex, smaller, lighter portable phones; portable fax machines; and other, yet undefined services which facilitate communicating with a person rather than a location.

Significantly, the range of services involves both residential and business applications, as well as both voice and data applications. While the penetration of cellular has been impressive, the service costs have tended to limit its use to the higher end of the business market. PCS has the potential to be more ubiquitous and in fact, the Commission has defined universality as one of its regulatory goals. One certain way to guarantee that universality will be achieved would be to allow LECs to apply for PCS licenses.

The NPRM indicates that certain commenters have previously raised concerns regarding potential anticompetitive behavior on the part of the LECs that might thwart the Commission's goals to achieve competitive delivery of PCS. The concerns raised are the standard litany in regard to the possibility of discriminatory interconnection and the ability to cross-subsidize from regulated revenues. Through many years of experience with these issues as competition was introduced and expanded in various services, the regulatory process has designed and implemented numerous safeguards to deal with concerns raised by PCS service providers that will compete with the LECs.

One of proposals in the NPRM, includes a mandated federal right of interconnection with the public switched telephone network. If PCS providers are entitled to obtain a type of interconnection that is reasonable for the particular PCS system and is no less favorable than that offered by the LEC to any other customer or carrier or for its own PCS, any concerns regarding potential discrimination could be alleviated.

The ability of LECs to cross subsidize the development of PCS from regulated revenues is largely illusory. As every aspect of the LECs business is subjected to increased competition, it is not possible to burden any service with additional costs. In fact, if the LECs were to try to shift PCS costs to basic services, it would guarantee that non-LEC PCS services would provide more and more competition to the LECs for these services. To the extent LECs attempted to artificially inflate the cost of any service, the result is simply to invite more competitive entry. The Commission's recent action in the Expanded Interconnection Docket (CC 91-141) further limits any potential ability to cross subsidize access and transport services and this docket will open the local loop to potential competition. The arguments raised by non-LEC PCS providers to keep the LECs out of the PCS business are insufficient to overcome the significant benefits that the LECs would bring to this developing market.

As the Commission recognizes there are economies of scope between PCS and the LEC wireline network which would not be realized if LECs were prohibited from providing PCS service within their wireline service areas. The LEC infrastructure will serve as the backbone for many PCS services. If the LECs are allowed to provide PCS in their service areas, the infrastructure will be developed to support these services for both LEC and non-LEC providers.

Citizens believes that the Commission's alternative proposal to allow LECs only 10 MHz or a reduced amount of 2 GHz spectrum compared with non-LEC PCS providers is unfair and should not be adopted. As stated previously, there are no legitimate reasons to restrict LECs from obtaining PCS licenses. Any potential concerns can be addressed with appropriate non-structural safeguards. For this reason there is no basis to handicap the LECs by denying them access to the same amount of spectrum that would be available to other PCS providers. The Commission has proposed no such spectrum restrictions on the cable television industry, although, of course, cable companies are monopolies in their service areas. Cable companies have been active players in the developing PCS market. There is no justification for restricting LECs from full participation in the PCS market while at the same time allowing full access to the PCS spectrum to the cable companies.

II. Mid-Size and Smaller LECs With Cellular Investments Should Be Eligible For PCS Licenses.

The NPRM proposes that cellular licensees should not be eligible for PCS licenses within their service areas. To the extent a LEC also is a cellular licensee within its service area that LEC would also be precluded from obtaining a PCS license. The Commission is concerned that cellular licensees that obtain PCS licenses would delay or thwart PCS that is competitive with cellular. This argument assumes that one or both of the cellular licensees will have the ability and incentive to stifle competition in their own markets. However, this argument may be founded on a false assumption. Cellular carriers provide primarily mobile service while PCS is targeting the localized pedestrian market. PCS will tend to be a localized service while cellular because of its mobile nature provides coverage over its entire service area. It is not clear that these two services applications will actually intersect, at least in initial stages. These services are also dissimilar in spectrum allocation and radio propagation. Some services will be better offered at one frequency than the other. For example, in-building services may be better provided at higher frequencies.

In addition to the dissimilar markets, cellular carriers have obligations that may diminish their ability to provide competitive PCS services. Cellular carriers have an obligation to serve analog customers while implementing digital technology to increase their

capacity. The transition from analog to digital will be long and difficult. The selection of technology to implement the transition is already a contentious process. All of these analog/digital transition issues plus the capacity drain represented by continuing to provide quality service to analog customers place the industry in a difficult position. The actual ability of cellular carriers to use their market power to stifle PCS entrants is questionable.

However, if the Commission decides to preclude cellular carriers from obtaining PCS licenses in their service areas, the mid-size and smaller LECs that have cellular interests limited to narrow geographic areas should not be prohibited from obtaining PCS licenses. The Commission should be careful to distinguish those LECs that have dominant control of major cellular markets, from the mid-size and smaller LECs that serve only rural markets or have a non-controlling interest in a cellular partnership.

While the majority of PCS service providers will initially target the large dense city locations, there is no reason to thwart the development of PCS in suburban and rural markets where the only likely PCS provider will be the LEC. If the Commission adopts a rule that limits cellular licensee participation in PCS in their service areas, an exception must be carved out for mid-size and smaller LECs that have cellular interests, so that these LECs have the opportunity to provide their customers the services that will be available to their urban counterparts.

III. The Commission Should Adopt a Licensing Mechanism Which Limits Speculative Filings and Ensures That Only Financially and Technically Qualified Applicants Obtain Licenses.

The Commission reluctantly concludes in the NPRM that lotteries are the only viable licensing mechanism absent Congressional authorization for competitive bidding. Citizens will assume that the necessary Congressional approval will not be in place prior to the PCS licensing process. The problems with the previous lottery process are well known and need not be repeated here.

The Commission's goals in revamping the lottery process should be to limit the number of speculative applications and curb the large expenditures of money for license application processing that serve only to make the "license mills" rich. Citizens believes the best way to achieve both goals would be to use a postcard process accompanied with substantial filing fees. The postcard process would require minimal information and would be simple to prepare.

Obviously the postcard process would result in hundreds of thousands of applications if it were not accompanied with high filing fees. By requiring substantial filing fees, the number of applicants would be significantly limited because only those that were willing to commit resources would participate. Citizens agrees with the Commission's proposal to check the qualifications of only the winning applicants. We also would support the option

to pick contingent winners at the time of the initial lottery to avoid the necessity of a second lottery if the winner is not qualified. While there is no perfect solution to the licensing process, a postcard procedure requiring substantial filing fees would eliminate some of the most egregious wrongs of the prior lotteries.

IV. Conclusion.

Citizens urges the Commission not to preclude LECs from eligibility for PCS licenses. LECs should not be limited in their choice of technology to provide services. The Commission's goal of universality for PCS cannot possibly be achieved if the LECs are not able to obtain PCS licenses. This is particularly true for the suburban and rural areas where the LEC is likely to be the only PCS provider. The mid-size and smaller LECs that have limited cellular interests should not be prohibited from obtaining PCS licenses in their service areas. The Commission should adopt a postcard licensing process with substantial filing fees in order to limit the number of speculative applications.

Respectfully submitted,



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